BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DEAN MCCONNELL	)	
Claimant	)	
VS.	)	
	)	Docket No. 227,052
FARMLAND INDUSTRIES, INC.	)	
Respondent	)	
AND	)	
	)	
WAUSAU UNDERWRITERS INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated September 29, 1997.

ISSUES

The Administrative Law Judge granted claimant preliminary benefits. Respondent requests review of the finding that claimant proved his injury was by accident that arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On July 10, 1997, claimant was leaving work for a doctor's appointment. As he was exiting his pickup truck, claimant injured his low back.

The respondent argues claimant's accidental injury did not arise out of and in the course of his employment with respondent because merely exiting a vehicle is not a hazard of employment and because claimant's injury resulted from a risk that was personal to the worker, citing Baggett v. B & G Construction, 21 Kan. App. 2d 347, 900 P.2d 857 (1995);

Bennett v. Wichita Fence Co., 16 Kan. App. 2d 458, 824 P.2d 1001, *rev. denied* 250 Kan. 804 (1992); and Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980)

In order to receive workers compensation benefits, claimant must show that his accidental injury arose out of and in the course of his employment. See K.S.A. 1996 Supp. 44-501(a); Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 197, 689 P.2d 837 (1984). Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to that case. In Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973), the Court stated:

> "The two phrases arising 'out of' and 'in the course of' the employment, as used in our workmen's compensation act (K.S.A. 1972 Supp. 44-501), have separate and distinct meanings, they are conjunctive and each condition must exist before compensation is allowable. The phrase 'in the course of' employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase 'out of' the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises 'out of' employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises 'out of' employment if it arises out of the nature, conditions, obligations and incidents of the employment." 212 Kan. at Syl. ¶ 1.

In addition, K.S.A. 44-508(f), as amended, provides, in part, the following:

> "The words 'arising out of and in the course of employment' as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence."

K.S.A. 44-508(f) "bars an employee injured on the way to or from work from workers compensation coverage." Chapman v. Beech Aircraft Corp., 258 Kan. 653, 655, 907 P.2d 828 (1995). "The rationale for the 'going and coming' rule is that while on the way to or from work the employee is subjected only to the same risks or hazards as those to which the general public is subjected. Thus, those risks are not causally related to the employment." Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 46, 883 P.2d 768 (1994).

An exception to the "going and coming" rule allows workers compensation coverage where travel on public roadways is an integral or necessary part of the employment. Kindel

v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995); Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984). However, although the claimant used his pickup truck as an integral and necessary part of his employment, at the time of his injury claimant was not exiting his vehicle during work.

Claimant had a prior workers compensation claim involving his ears and his trip to the doctor was part of that claim. Claimant took sick leave but respondent paid for the doctor and claimant's mileage expense.

> "Under the workmen's compensation act securing medical treatment was in the {course} of claimant's employment with respondent and the trip to and from the doctor's office arose out of the nature, conditions, obligations or incidents of his employment . . . ." Taylor v. Centex Construction Co., 191 Kan. 130, Sy1 ¶ 1, 379 P.2d 217 (1963).

Also, in Helms v. Tollie Freightways, Inc., 20 Kan. App. 2d 548, 889 P.2d 1151 (1995), the Court of Appeals determined that at least for purposes of assigning liability between insurance carriers, an injury which occured while traveling to or from medical treatment should be treated as a new accident and was not a direct consequence of the original accident for which claimant was receiving treatment. The ultimate question, then, is whether Mr. McConnell was on a mission or duty for his employer. Because claimant was using his vehicle to obtain medical treatment for a work-related injury, the Appeals Board finds there was a causal connection between the injury and the employer's business.

K.S.A. 44-508(f), as amended, also creates a "premises" exception to the "going and coming" rule codified in the first sentence of that statute. The second sentence of K.S.A. 44-508(f) provides:

> "An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer."

Therefore, although claimant had clocked out, he was on the respondent's premises when the accident occurred and this claim falls within the "premises" exception to the "going and coming" rule. See Thompson v. Law Offices of Alan Joseph, *supra*; and Teague v. Boeing Airplane Co., 181 Kan. 434, 312 P.2d 220 (1957).

In addition to its argument that claimant was not in the pickup because of his job, respondent also denies there was an accident. At pages 42 and 43 of the transcript of the September 24, 1997, preliminary hearing, the following discussion appears:

> THE COURT: I heard your testimony about getting out of the truck, okay, I'd like to hear again one more time if I could, can you explain to me exactly what happened as you were getting out of the truck?
>
> A. I don't know, you know, how you swing to get out of the truck and then of course I'm short-legged, one leg goes down and when one leg went down, the other leg was still in the truck and it (witness indicated) like that there, and I reached back and got my dinner bucket but it already happened when one foot went down and hit the floor and one still in the truck. I was half in and half out. I never slipped or anything, I slid out.
>
> Q. What did you feel?
>
> A. I don't know, you ever felt your back pop, something like that, indicating, right down there, (indicating)?
>
> Q. Did you have pain?
>
> A. Not at that moment I didn't.
>
> Q. Okay, when did you first start feeling the pain?
>
> A. Oh, when I got out of the car at Bartlesville I was real stiff like I am now but it limbered up and then when I sat it started getting stiff, real bad stiff. I had trouble, I didn't sleep hardly any Saturday night because of this muscle cramping, it started cramping on me.

Respondent's counsel refers to the July 10, 1997, incident as just an act of getting out of a vehicle. The same thing he would do at home or any place else. Accordingly, whether exiting a pickup truck qualifies as an accident within the meaning of the workers compensation act is another question. K.S.A. 44-508(d), as amended, defines accident as:

> "Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment."

In Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 379 (1978) the Supreme Court stated:

> "It has long been the rule that injury to a worker by a strain sustained in performing the usual tasks in the usual manner may constitute an accident within the meaning of the worker's compensation act even though there be no outward and discernable force to which the resultant disability can be traced. . . . We note under the definition of accident it is not necessary that an accident be accompanied by a manifestation of force, and it may refer to a series of events. Under the workers' compensation act any lesion in the physical structure of a worker causing harm may be a personal injury if it occurs under the stress of usual labor."

However, in Martin, the Court of Appeals addressed an injury which occurred in a way similar to the injury in this case. There the Court found:

> "Considering the history of claimant's back problems, it is obvious that almost any everyday activity would have a tendency to aggravate his condition, *i.e.*, bending over to tie his shoes, getting up to adjust the television, or exiting from his own truck while on a vacation trip. This is a risk that is personal to the worker and not compensable." 5 Kan. App. 2d at 300.

In this case, getting into and out of a pickup truck was a part of claimant's usual job. Respondent correctly asserts that it can also be a regular part of normal day-to-day living. K.S.A. 44-508(e), as amended, which defines "injury" excludes "normal activities of day-to-day living" from being found to have been caused by the employment.

The Appeals Board has struggled with this 1993 addition to the definitions statute. The conclusion reached is that the Legislature intended to codify and strengthen the holdings in Martin and Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972). Claimant's injury in this case is distinguishable from both Martin and Boeckmann. Claimant's pre-existing back condition had not been symptomatic for some time before getting out of the pick-up truck on July 10, 1997. Also, the medical evidence does not show it to have been of such a nature that any movement would aggravate it. Furthermore, the Court in Boeckmann distinguished cases in which "the injury was shown to be sufficiently related to a particular strain or episode of physical exertion" to support a finding of compensability. *Id* at 737.

In this case, claimant was on a mission for his employer and this was his sole mission at the time of the accident. Furthermore, the injury was not from a risk that was personal to the claimant. Accordingly, the Administrative Law Judge was correct in holding that claimant's accident arose out of and in the course of his employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated September 29, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 1997.

BOARD MEMBER

c: Carlton W. Kennard, Pittsburg, Kansas
Garry W. Lassman, Pittsburg, Kansas
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director